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# Customs Appeal Tribunal Clarifies Classification Of Cigarillos And Reaffirms Limits On Customs' Administrative Interpretation

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The Customs Appeal Tribunal (Tribunal) has delivered a significant decision on tariff classification, ruling that a tobacco manufacturer's cigarillo products were correctly classified under Tariff Code 2402.10.0000 as cigarillos containing tobacco, and not under Tariff Code 2402.20.9000 as cigarettes containing tobacco as contended by the Royal Malaysian Customs Department (Customs).

Beyond the immediate classification issue, the decision is noteworthy for two broader principles that may have implications for future customs disputes.

First, the Tribunal reaffirmed that customs authorities cannot impose additional classification requirements that are not found in the Customs Duties Order 2022 (CDO 2022) or the World Customs Organisation (WCO) Explanatory Notes. Taxing provisions must be applied as written and cannot be supplemented by administrative interpretations.

Secondly, the Tribunal underscored the importance of evidential integrity in disputes involving technical or scientific evidence. Where expert reports form the foundation of a party's case, the failure to call the author of those reports, coupled with significant evidential deficiencies, may justify an adverse inference being drawn against that party.

The taxpayer in this appeal was successfully represented by the firm's Tax, SST & Customs Partner, S. Saravana Kumar and Associate, Tan Jia Hua.

## Background

The taxpayer manufactures, imports and distributes tobacco products in Malaysia. The cigarillos in dispute were imported from the Philippines and had consistently been classified under Tariff Code 2402.10.0000.

The Customs have previously issued an import license expressly identifying the products under that tariff code and had cleared multiple importations on the same basis.

The dispute arose after enforcement officers seized a quantity of the products and obtained a report from the Chemistry Department which allegedly concluded that the cigarillo wrapper did not contain tobacco. Customs subsequently took the position that the products should instead be classified as cigarettes under Tariff Code 2402.20.9000.

Following the issuance of Customs Rulings and an unsuccessful review process, the taxpayer appealed to the Tribunal.

## The Dispute

The central question before the Tribunal was whether the products were properly classified as cigarillos or cigarettes. This turned largely into two issues:

(a) Whether the CDO 2022 and the WCO Explanatory Notes require a cigarillo wrapper to contain tobacco; and

(b) Whether the Chemistry Department reports relied upon by the Customs were sufficiently reliable and admissible to support the reclassification.

## Tribunal Rejects Additional Classification Requirement

The taxpayer argued that neither the CDO 2022 nor the WCO Explanatory Notes impose any requirement that a cigarillo wrapper must contain tobacco. According to the taxpayer, the relevant tariff heading only requires that the product be a cigar, cheroot or cigarillo containing tobacco, whether wholly or partly mixed with tobacco substitutes. No separate wrapper-content requirement exists.

The Tribunal accepted this position where it rejected Customs' attempt to infer an additional condition from the wording of the WCO Explanatory Notes. The Tribunal held that tariff classification must be determined by reference to the express language of the applicable legislation and internationally recognised explanatory materials, rather than administrative assumptions or industry practices.

The Tribunal also noted that the products had consistently been recognised as cigarillos by Customs authorities in multiple jurisdictions operating under the Harmonised System, including New Zealand, Hong Kong and Taiwan.

## Serious Evidential Deficiencies Identified

The taxpayer further challenged the reliability of the Chemistry Department reports relied upon by Customs. In support of its position, the taxpayer produced independent evidence from multiple sources, including technical documentation from the wrapper manufacturer and laboratory reports from accredited laboratories. Collectively, those reports supported the presence of tobacco fibres and tobacco alkaloids in the wrapper material.

The Chemistry Department reports contained deficiencies as the reports did not disclose the testing methodology employed, the scientific standards applied, the testing parameters examined, the analytical process undertaken or the chain of custody of the samples tested.

More significantly, one of the reports relied upon by Customs did not even identify the sample tested as originating from the taxpayer's products, creating a critical evidential gap.

Given the central importance of the reports to the Customs' case, the Tribunal held that the failure to call the maker of the reports justified the drawing of an adverse inference against the Customs pursuant to Section 114(g) of the Evidence Act 1950.

Accordingly, the Tribunal set aside the Customs Rulings and allowed the taxpayer's appeal.

## Why This Decision Matters

Although the dispute concerned tobacco products, the Tribunal's reasoning extends beyond the tobacco industry and may influence customs classification disputes more generally.

First, the decision reinforces the principle that tariff classification must be grounded in the express wording of the applicable legislation and the WCO Explanatory Notes. Customs authorities cannot introduce additional requirements that are not found in those instruments.

Secondly, the decision highlights the importance of evidential rigour where scientific or technical reports form the basis of a regulatory decision. The reliability, methodology and provenance of such reports may be subjected to close scrutiny.

Finally, the ruling underscores the need for a clear evidential chain linking any scientific analysis to the goods under dispute. Absent such linkage, tribunals may be reluctant to accord significant weight to the evidence.





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